A small clinic in one of the northeastern counties in Wisconsin has many Hmong patients the clinic doctors have treated for many years. One of the Hmong patients, who is not covered by Medicaid, requested an interpreter when she made an appointment with her regular doctor, the clinic's Internist.

- 1. He had been treating the whole family for many years and was very familiar with their medical history. There were no problems with communication in the past.
- 2. The patient has never asked for an interpreter before, but she was told by a Hmong nurse in her community that she could request for one. In the past, she always brought her 15 year old daughter to interpret for her, and the clinic thought this was appropriate because her on-going problem was an ear infection that could be treated with antibiotics. Upon hearing of the request for an interpreter, the Internist said that he would only see her if she brought her daughter with her.
- 3. The Internist then called the Hmong nurse to explain that he has had problems with the family in the past because they did not always show up for their appointments, and he could not afford to hire an interpreter if they missed the appointment.
- 4. The nurse said that this Hmong patient was often confused about after-care instructions and had other questions for the doctor. Her daughter could not ask these questions for her.
- 5. The following week, the Internist called the Hmong nurse to complain that the patient did not show up for her appointment.

Additional Facts

The clinic has provided care and treatment to the Hmong community for almost 20 years, and they have never had complaints. The Hmong nurse has experience working with the health care community in the county so that interpreters are available 24 hours, 7 days a week. Her community-based organization held educational workshops in the community to explain health care issues.

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
1. What is the complaint? Is it legitimate?		Patient wants a competent interpreter provided by the clinic. Legitimate concern—yes, she wants to understand every thing that the doctor tells her,
2. What federal and/or state laws apply, if any? Why?		If the clinic accepts Medicaid patients, then the clinic must follow Title VI – LEP policy for all patients. Funds provided to ensure the continued operation of a corporation or assistance to the entity "as a whole," i.e., all operations of the entire corporation, are subject to Title VI requirements. Federal financial assistance extended to a corporation or other entity "as a whole" refers to situations where the corporation receives general assistance that is not designated for a particular purpose. When any recipient is principally engaged in the business of providing education, health care, housing, social services, or park and recreation, and any part of this entity is extended Federal financial assistance, then "program or activity" encompasses all of the operations of the entire entity. If the entity does not take any MA patients LEP may not be enforceable. However, because the clinic serves a big Hmong population, it should at the very least make sure competent interpreters are available.
What other facts or questions must you consider?		 Do barriers other than language exist? What has worked for the clinic in the past? Can good procedures be enhanced? Hmong community must know that children, other family members and friends

	are not acceptable as interpreters due to competency and confidentiality issues. • Clinic should use Hmong community services as a resource and continue learning how to provide culturally competent health care
4. Depending on your role in the organization, how would you go about investigating this complaint?	 Talk to doctor; look at appointment book to verify no-shows for this particular family; see if clinic ever paid for competent interpreter. Use interpreter to talk to Patient RE concern and reasons for no-shows. Did they understand how appointments are set up, and know to call if they can't make it?
5. What other services or benefits could should have been offered in this situation?	Regardless of whether the clinic is covered under Title VI, it should have provided for a competent interpreter to avoid any confusion during the appointment. Contact with a Hmong Mutual Assistance Association (MAA) to conduct educational programs for the community to explain why no-shows are a disadvantage to them.

Who (Agency Head, EOC, LEPC,	What steps must be taken to resolve these issues?	
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion
Front Line Staff		Be aware of LEP policies; refer to LEP/ Complaint Coordinator; ask the clinic manager how one goes about getting an interpreter if needed.
EOC		Refer to LEPC
LEPC		Go through investigation process above. Because of Hmong in service area and history of Hmong patients, the clinic must have a LEP plan to address interpretation.
Agency Head		Eliminate use of children by establishing clear

internal policies and training for staff. Ensure clear policy and procedures to be used for family/friends to be used as interpreters and ensuring competency and confidentiality (HIPPA implications)
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family/friends to be used as interpreters and
ensuring competency and confidentiality (HIPPA
implications).
Train existing and new staff. Use evaluation tool
to see if medical treatment becomes more
effective once competent interpreters are used.
Build in interpretation cost into administrative
budget.

Pre-session Notes	Session Discussion
	The clinic must have a LEP Plan and competent interpreter when needed.
	2. The Hmong family must follow clinic appointment and medication protocols.
	3. No children can be use as interpreters.
	4. Family/friend may be used only when formal interpreters are turned down because you are honoring the patient's choice. However we advise
	the provider to use the provider's formal interpreter to avoid the risk of
	misinterpretation and/or miscommunication due to difficulties in interpreting
	medical terms and protocols.

Jennifer Taylor, a Native American, filed a complaint against the County Mental Health Center for discrimination based on race when she attempted to access mental health services at the County Mental Health Center.

- 1. Ms. Taylor suffered from a severe episode of depression. She received mental health counseling from the Tribal Health Clinic at the reservation. Her attending tribal health care provider referred her to the County Mental Health Center for further treatment and counseling.
- 2. The tribal clinic is approximately 20 miles one way and she had to rely on public transportation or use her bicycle; the County Mental Health Center was more convenient. Ms. Taylor went to the center on her appointed time and day, completed forms and showed a copy of her BadgerCare insurance card. Her address listed her as a tribal member living outside the reservation.
- 3. Ms. Taylor waited for more than half an hour. The receptionist, when questioned, said the doctor was reviewing her medical records which would take only a few minutes more. After another 15 minutes, she was told that the doctor had to attend to an accident on his way to the health center. To Ms. Taylor, these were excuses to discourage her from seeking health care in the center. She left.
- 4. Anxious to be pro-active, the center manager called Ms. Taylor to find out why she had left. When Ms. Taylor explained her reasons, the manager stated that their mission was to serve clients who are unable to receive services from any other sources. "If individuals are able to obtain services through other entitlement programs, i.e., veteran or tribal services, they are asked to seek services there." The manager also suggested that Ms. Taylor might feel more comfortable receiving culturally appropriate counseling through the Tribal Health Clinic than she would in the County Mental Health Center.

Additional Information:

Tribal members are considered county residents wherever the tribal reservation is located. Tribal health clinics have varying resources depending on whether or not the tribe has a lot of resources and can fund a full-functioning clinic with appropriate health care professionals. According to a 1987 memorandum of agreement signed by the Indian Health Services, the Center for Medicare and Medicaid Services (formerly HCFA), and the Office for Civil Rights, the payor of last resort is the county, not the Indian Health Services which may act as a funding source if a tribe has no other resources. This arrangement, however, may not be uniformly applied for all counties.

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
1. What is the complaint? Is it legitimate?		Failure to provide health care based on race. <u>Legitimate</u> ? Yes.
2. What federal and/or state laws apply, if any? Why?		Title VI—nondiscrimination based on race. In this case, the County is unintentionally discriminating against a specific protected class and causing a Disparate Impact/Effect . "A recipient, in determining the type of disposition, service, financial aid, benefit, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin."
What other facts or questions must you consider?		 Are case records transferable from the tribal clinic to the county health center? Must Ms. Taylor have a new case file opened for her and be evaluated from the start because of different procedures? The center should be able to provide culturally competent health care for all their patients.

4. Depending on your role in the organization, how would you go about investigating this complaint?	Interview Ms. Taylor again. Interview center manager to see if they have a written and consistently applied policy for referrals. Review county contract with the state to see if any contract language addresses county/Indian Health Services (IHS) responsibilities, and how they are supposed to cut the pie on funding and health care services.
5. What other services or benefits could/ should have been offered in this situation?	Treat Ms. Taylor now and worry about funding later. Her mental condition may need immediate and critical attention! If she is sent home without attention, consequences may be severe.

Who (Agency Head, EOC, LEPC,		
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion
Front Line Staff		Make sure you know the basic eligibility of county residents; if not, be trained. Refer complaint.
EOC (Clinic Manager)		Did the right thing by calling complainant for follow up. See notes on investigation above. See that Ms. Taylor gets treatment regardless of where the money may come from.
LEPC		No follow up needed.
Agency Head		Review and modify all internal policies and procedures having a <u>Disparate Impact Effect</u> on any and all protected classes covered by federal and state nondiscrimination rules and regulations
		Follow up on state/county contract language; clear up any misunderstanding regarding entitlement programs, referrals and payors.

Pre-session Notes	Session Discussion	
	Above all, ensure that Ms. Taylor receives appropriate health care immediately. Make sure that whichever clinic/center provides this health care, that her treatment is overseen by a Psychiatrist who can deal with he medication. Once you have the clarification about who should provide	
	Ms. Taylor's health care, write both the tribal clinic, county health care center, and Ms. Taylor that clearly states the process of referring her between clinic and center for appropriate care and funding. Refer back to the county, and to the state if necessary, for the correct referral practice.	

Mrs. Grace G. Nolan is an elderly Medicaid and Medicare recipient because she has certain disabilities covered by both insurance programs. She is also enrolled in the SeniorCare program. At the request of Mrs. Nolan, the local Neighborhood Senior Center arranged a dental appointment for emergency dental work. After going through the list of Medicaid dental providers, the center made an appointment with the closest clinic to her residence. Only two dentists in this clinic accepted Medicaid patients from her side of town. Mrs. Nolan did not drive and had to rely on the SeniorCenter transportation service.

The dental clinic specializes in pediatric dentistry with patients between the ages of 3 to 18 years of age. The clinic turned Mrs. Nolan away when she came on her appointed time. Mrs. Nolan, extremely upset to learn that the clinic would not take her as a dental patient, called the county Equal Opportunity Coordinator to file a complaint of discrimination based on age.

Additional Facts

Medicaid is a federal/state program that pays health care providers to deliver essential health care and long-term care services to frail elderly, people with disabilities and low-income families with dependent children, and certain other children and pregnant women. The Medicaid programs in Wisconsin include Medical Assistance, BadgerCare and SeniorCare. Medicaid is not a welfare program; it is a health insurance program. Only a small percentage of Medicaid recipients receive welfare cash assistance. Without Medicaid, these people would be unable to receive essential services or would receive uncompensated care.

SeniorCare is Wisconsin's Prescription Drug Assistance Program for Wisconsin residents who are 65 years of age or older and who meet eligibility requirements—Wisconsin residency, age 65 or older, income within the prescribed limits of the program.

Dentists may chose not to participate in Medicaid and can turn down new patients as long as the reason is not based on race, color, national origin, gender, and disability. Not all dentists are qualified to treat individuals with certain disabilities.

Medicare is a federal Health Insurance Program for people 65 years of age and older, some people with disabilities under age 65 and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
1. What is the complaint? Is it legitimate?		Failure to provide services based on age. Legitimate? No. The clinic specializes in pediatric dentistry and cannot treat Mrs. Nolan.
2. What federal and/or state laws apply, if any? Why?		The Age Discrimination Act of 1975, while it prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The regulations adopt the fourpart test established in the general regulations to determine when an explicit age distinction is necessary to the normal operation of a program or to the achievement of a statutory objective of a program. The test requires that: The age distinction be used as a measure of another characteristic(s); the other characteristic(s) must be measured in order for the program to continue to operate normally or to meet a statutory objective; the other characteristic(s) is impractical to measure directly on an individual basis. All parts of the test must be met for an explicit age distinction to satisfy one of these exceptions and to continue in use in a federally assisted program. This four-part test will be used to scrutinize age distinctions that are imposed by recipients in

	the administration of federally assisted programs, when the recipient alleges the distinction is necessary to the normal operation or the achievement of a statutory objective of a program and when the age distinction is not specifically authorized by a Federal, State, or local statute.
3. What other facts or questions must be considered?	 What kind of emergency did Ms. Nolan have? Part of an underlying medical condition? Dental services are generally excluded from Medicare coverage; however, there are a few minor exceptions. Payment may be made under Part A for inpatient hospital services in connection with the provision of dental services if the individual, because of an underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services. What other types of programs could Ms. Nolan be eligible for so she can increase her options for dental care? Only other resource to tap would be dentists who provide free dental services to people who cannot afford to pay for dental care on a regular basis. The problem is that these services are scheduled ahead of time and having an dental emergency won't help the situation at all.
4. Depending on your role in the organization, how would you go about investigating this complaint?	Nothing to investigate.
5. What other services or benefits could should have been offered in this situation?	See if the other dentists of the clinic can provide emergency dental care. Provide names of other clinics that treat a broader range of patients. DHFS maintains such a list. Make sure that transportation is not a problem.

Who (Agency Head, EOC, LEPC,	What steps must be taken to resolve the	must be taken to resolve these issues?	
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion	
Front Line Staff		Know the reasons why the dentist can treat only certain patients; refer complaint.	
EOC		Explain the limitations of the pediatric dental clinic—they cannot treat someone older than 18. Refer Mrs. Nolan to other dentists.	
LEPC		Nothing.	
Clinic Administrator		Note complaint. May need to contact State Medicaid program to alert recipients where they should go for appropriate dental care.	

Pre-session Notes	Session Discussion
	Give Ms. Nolan and the Senior Center a list of dentists in the area who can provide dental to patients of all ages, and to geriatric patients.
	2. Find out what hospitals in the area take in-patient care if dental care needs special procedures found only in hospitals (done for children with developmental disabilities).
	3. Find out which dentists are willing to take emergency cases like Ms. Nolan, who have tooth aches that are not associated with an underlying medical condition that can be covered through MediCare.

A complaint against a mid-size county was filed at the Department of Health and Family Services for failure to provide timely economic support to a family. The family consisted of a mother, two children ages 6 and 5 by a previous husband, and a yet-unborn child fathered by her boyfriend. The family claims they were eligible for medical assistance, food stamps, school hot lunches, W-2 participation, disability benefits for a profoundly disabled child, and child support from the natural father. The initial denial of Food Stamps, hot lunches, and W-2 participation resulted in homelessness and limited funds to buy food.

- 1. The mother and 5 year old son have disabilities. The son was placed in a foster care treatment facility by the court, but he was eligible, like his sister, age 6, for hot meals at school. However, the school had asked that the son be removed from school because of his violent and unpredictable behavior; at times three to four adults had to control him in class. The mother did not receive counseling or support from the school. The court were needed a hearing scheduled to determine if the son's condition was due to mental illness or parental abuse.
- 2. Food stamps were calculated based on the boyfriend's income, which was \$10/hours. The amount was inconsistent month to month. The boyfriend claimed that he could only hold a job for about 3 months at a time. When they had no income, they would stay with friends or became homeless.
- 3. Child support was difficult to collect because the father of the two children lived in another state and could not be found.
- 4. According to the complaint, the mother was not allowed by the county to apply for W-2 because she was pregnant at the time. This exclusion was not explained during her initial application.

Additional Facts

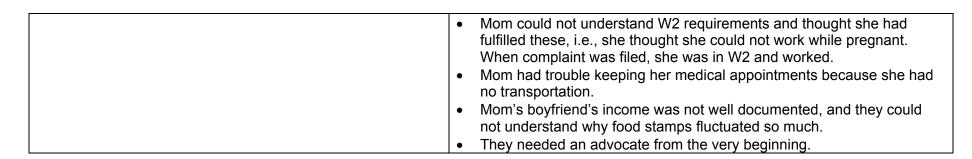
- W-2 and Child Support are administered by the Dept. of Workforce Development
- Medical Assistance, WIC, Food Stamps and Child Protective Services are administered by the Dept. of Health and Family Services (DHFS).
- The Hot Lunch Program is administered by the school district.
- The mother's disability limited her ability to respond to paperwork and the timeliness needed during application to programs.
- The family had an advocate who brought the complaint to DHFS. She was given permission to discuss confidential issues.

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
What is the complaint? Is it legitimate?		Timely provision of benefits resulted in homelessness, inability to feed themselves properly, employment support. Legitimate complaint—denial of equal access to eligible services due to disability.
2. What federal and/or state laws apply, if any? Why?		ADA Title II and III, Section 504 of the Rehabilitation Act of 1973
		Mother needed accommodation so she could understand what was needed from her; she also needed help in processing paperwork for timely delivery of services.
3. What other facts and questions must you consider?		 Paperwork, paperwork, paperwork!! Does the advocate have a release of confidential information from the family? Make sure that the correct information has been communicated to the family. Many of the complaints are based on false understanding of the eligibility rules and process needed before receiving benefits and services. Staff may need more training. If misinformation is consistently being communicated, management must be informed of this and a corrective and systematic action must follow.
4. Depending on your role in the organization, how would you go about investigating this complaint?		 Talk to advocate to get a better idea of problem; follow up with all agencies as the respondent. Piece together the chronology of events to have a better idea of what has been going on.

5. What other services or benefits should have been offered in this situation?	EXAMPLES: Have only one case worker who can coordinate all services the family needs. Use advocate as much as possible. Contact
	each agency to find a contact person who knows the status of benefits and services.

Who (Agency Head, EOC, LEPC,	What steps must be taken to resolve these issues?	
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion
Front Line Staff		Respond to questions; be open to repeating information many times; be patient and help customer to complete paperwork as much as possible; welcome advocate as partner in helping customer; coordinate benefits from other state agencies as much as possible at the county level
LEPC		Nothing to do
EOC		must be contacted to find out if discrimination issues are present (ADA T2)
Complaint Coord		receive the complaint and investigate; should refer at state level to get all benefits figured out; get contacts from all agencies.
Agency Head		be aware of the complaint and ask for updates. Final word on resolution.

Pre-session Notes	Session Discussion See roles of front line staff and complaint coordinator.	
	Real situation:	
	 Paperwork was a big problem; mom couldn't understand what she had to do, so she missed a lot of submission deadlines. Hot school meals were not authorized on time. 	
	 Mom could not find the father of 2 kids who lived in Louisiana. It stalled a lot of other paperwork for eligibility. 	
	 Mom herself had severe mental health problems that were barriers to appropriate and timely service delivery. 	



Ms. Pat Jansen, a legally blind person, filed a complaint against Saint Clotilda Community Hospital for refusing emergency medical attention on two separate occasions while she was assisted by her service dog.

- 1. On her first visit, ER staff refused to treat her because dogs were not allowed in the ER. She informed hospital staff that her dog was a trained service animal but despite her assurances, ER staff refused to allow her into the ER for emergency health care.
- 2. Ms. Jansen called the hospital administrator to complain about ER's refusal to allow her service animal into the ER. The administrator assured her that he would write a memo that will allow the service animal into the ER for succeeding visits.
- 3. Three months later when Ms. Jansen needed ER care, the same situation occurred, i.e., her service animal was not allowed into the ER. She placed another call to the hospital administrator, but now he informed her that if she wanted medical attention from the hospital, "the dog had to go."
- 4. A Police Officer intervened for the ER staff and asked Ms. Jansen for her service dog's certificate of training. Ms. Jansen could not produce a certificate nor a valid credential.
- 5. Ms. Jansen lived within close proximity to the hospital, and the Officer took her dog home. She returned with Ms. Jansen's walking cane. Ms. Jansen received medical treatment after the service animal was removed from the hospital.
- 6. Ms. Jansen claimed that she suffered a severe injury to her hands requiring surgery when she fell during her walk home from the hospital.

Additional Facts;

Saint Clotilda Community Hospital is owned and operated by the Good Samaritan Sisters and governed by a Board of Trustees made up of lay persons. The hospital is a Medicaid and MediCare provider but claims exemption from Title III of the Americans with Disabilities Act of 1990 that requires facilities open to the public be both programmatically and physically accessible to persons with disabilities.

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
What is the complaint? Is it legitimate?		Failure to make medical services accessible to a blind individual. Legitimate? Yes. Jansen needed the dog to navigate within the hospital, but the hospital may need a sterile environment in the ER. He could have been guided around the ER by ER staff, with the dog waiting for her outside the ER. Under ADA, the facility may modify the accommodation request.
2. What federal and/or state laws apply, if any? Why?		Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §749, and its implementing regulations, 45 CFR Part 84 is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. Subpart FHealth, Welfare, and Social
		Services - 84.51 Application of this subpart, applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.
		84.52 Health, welfare, and other social services. (a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:
		(1) Deny a qualified handicapped person these benefits or services;

- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered non-handicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in ? 84.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide deferent or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.
- (b) *Notice*. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.
- (c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the services in question.

Definition of a service animal is any guide dog, signal dog, or other animal individually trained to do work and perform tasks for a person with a disability.

A service animal is consider an auxiliary aid that many blind and some persons with other disabilities, such as deafness, epilepsy and mobility impairment, use to permit them independence or improved safety in their activities of daily living.

45 CFR§ 84.4 (b) (iv). Refusal to admit a disabled person to a facility because that person is accompanying by a service animal is in effect, prohibiting the use of an auxiliary aid.

What is at issue is the establishment of criteria or procedures that limit disabled persons from enjoying the same rights and privileges as others because they have chosen a service animal as an auxiliary aid. See 45CFR§ 84.4(a), (b)(vii).

Furthermore, hospitals, nursing homes, or other health and human service entities that employ disabled persons or permit, invite, and regularly encourage visitors to their programs may not establish a policy that in

general, prohibits the use of auxiliary aids by employees and visitors, unless there is a medical justification showing that the presence or use of a service animal would pose a significant health risk in the particular area directly involved.

Therefore, in health care settings, when a patient, guest, employee or medical staff member is accompanied by a service animal, the animal must be granted access to all areas of the health facility except for those areas where an individual must take special precautions to enter, such as wearing a mask, gown and gloves.

Title III of the ADA. 28 CFR § 36.302 (c)(1)

A public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. A public accommodation may deny access to a facility to service animal only under this exemptions: (1) the animal is out of control and the animal's owner does not take effective action to control it (for example, a dog that barks repeatedly during a movie) or (2) the animal poses a direct threat to the health or safety of others.

In these cases, the business should give the person with the disability the option to obtain goods and services without having the animal on the premises.

Businesses that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.

A business is not required to provide care or food for a service animal or provide a special

2. What ather facts or questions must val	location for it to relieve itself. Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals. Violators of the ADA can be required to pay money damages and penalties. Wisconsin Statutes Chapter 174.056 has no bearing on this issue as Federal Statutes supersede.
3. What other facts or questions must you ask?	Are there laws that trump either hospital or ADA laws?
4. How would you go about investigating this complaint?	Request a written statement from the hospital stating their reasons for denying Ms. Jansen medical attention in the emergency room. Request the hospital's written policies and procedures for providing auxiliary aids to persons with disabilities including service animals. Review the criteria for excluding a service animal to determine if the exclusion polices are in accordance to CDC environmental infection control protocols and measures to reduce the risk of disease transmission such as in the case of: 1. Operating Rooms with special ventilation and airborne infection isolation rooms; or 2. Areas where visitors are generally not permitted to enter without taking protective infection control measures (using gloves, wearing gowns and masks, wearing protective equipment, paying strict attention to hand hygiene, etc.) 3. Other restricted access areas include: Radiology rooms; clinical laboratories; protective environment units housing severely

	immuno-compromised patients; medication preparation and storage areas; food and formula preparation rooms; areas where equipment is reprocessed and sterilized.
5. What other services or benefits could should have been offered in this situation?	Instead of denying services to Ms. Jansen, the facility could have provided the accommodation and provided the service in the emergency room in a safe manner. The facility could have been more reasonable, such as, discuss preferences prior to admission; advising patient that the care and supervision of the animal is solely the owner's responsibility; making reasonable efforts to help facilitate transfer of the animal to designated individual. If no one is available to transfer the animal, contact infection control or risk management/corporate compliance person for other options acceptable and in accordance to CDC safety protocols and Title III of the ADA.

Who (Agency Head, EOC, LEPC, Complaint Coord., Front Line Staff)	What steps must be taken to resolve these issues?	
	Pre-session Notes	Session Discussion
Front Line Staff		Refer to EOC at once.
EOC		Resolve problems at lowest level. Advise Jansen to make sure her dog is certified properly. Make other arrangements to make ER services accessible without having to bring the service dog into the ER.
LEPC		Nothing.
Agency Head		Re-examine the hospital policy RE service dogs in the ER and in other places in the hospital. Look into legal liability if certain activities cannot be accommodated. Do a better job in explaining the reason why a service animal cannot go into an ER or in other environments that must be kept

sterile. Train <u>all</u> staff about how to provide accommodations. Set up evaluation tool to see
hospital follows policy/procedures.

Pre-session Notes	Session Discussion
	See agency head's role—Taskforce?
	Review Accommodation Policy
	 Identify areas that work; areas that need improvement;
	Use survey + focus group of staff representing broad range of jobs in the hospitals
	If never done, use ADAAG to evaluate physical accessibility
	If never done, use Rehab specialists to evaluate program accessibility
	Incorporate EOC/LEPC/Complaint Coord roles into the process
	Establish protocols that would correct problems on the spot
	Train staff!!!!!!!!! They shouldn't just say "no" without a reason; must know how to offer other mutually acceptable solutions.

A Legal Services Corporation (LSC) filed a complaint on behalf of a client who applied for TANF/ W2 services and benefits in LaFollette County. Their client is suing the county for failure to provide services that she was eligible to receive. The complaint asserts that the following series of events took place over several months:

- The client applied for and received W-2 services during the Fall of 2004.
- The W-2 Agency closed the case in the winter of 2004 because the client missed a number of scheduled appointments.
- After the case was closed, the client informed the W-2 Caseworker that she needed financial assistance.
- The Caseworker advised the client to contact a "Resource Specialist."
- The client met with the Resource Specialist. The Agency sent Medical Capacity Forms to the client's physician.
- Once the physician returned the forms to the Agency, the Caseworker requested that the physician provide additional information regarding the client's "restrictions."
- The Caseworker also requested that the client provide financial statements for her minor children and an adult child.
- A case comment in the computer record stated that, "W-2 remains closed until the client provides the information requested and meets with the Financial Employment Planner (FEP)."
- About a month later when the client attempted to comply with the Agency's request for information, she was instructed to provide "further information."
- The Agency finally "re-opened" the case early in the Spring of 2005.

Additional Facts:

The client suffers from a seizure disorder, chronic pain syndrome, depression and anxiety disorder. Her physician indicated significant walking, standing and lifting restrictions. Medication prescribed for treating these conditions affects memory and concentration. Additionally, physician statements describe the client as anxious and easily overwhelmed, with a low tolerance for frustration, difficulty in communicating needs, being around other persons, making decisions and coping with unfamiliar environments.

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
What is the complaint? Is it legitimate?		Failure to provide W2 benefits and services. Legitimate? Yes.

2. What federal and/or state laws apply, if any? Why?	ADA Title 2 prohibits discrimination in service delivery based on a disability. The caseworker did not allow flexible time to follow paper processing when needed. Caseworker had enough information to make a determination that assistance was necessary because of this disability.
3. What other facts and questions must you ask?	 Case should have been red-flagged by a supervisor; client was "given the runaround," a perfect scenario for failure from the start. There does not seem any communication between staff who are working on service delivery for this client.
Depending on your role in the organization, how would you go about investigating this complaint?	Interview the client to pinpoint the difficulties of the application. Talk to the caseworker to find out where she could assist the client with paperwork and being more specific about what other medical information she needed.
5. What other services or benefits could should have been offered in this situation?	Direct assistance from the caseworker. Caseworker must be trained on how to provide services to clients who have the same restrictions in communicating as the client.

Who (Agency Head, EOC, LEPC,	What steps must be taken to resolve these issues?	
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion
Front Line Staff (Caseworker)		Know more about mental illness and how to assist clients; have more patience, give more time to manage this case if this is possible
EOC/Complaint Coordinator		See above #4; respond in writing to the LSC who filed the complaint for the client.
Agency Head		This seems to be a chronic problem for all case managers; seek a systemic solution to more meaningful and effective case management

Pre-session Notes	Session Discussion
	Assign more time to the case manager to get this case in order and coordinate the needed services. If no corrective action is done, things will stagnate and go on as usual. Better communication cuts down on complaints and the time it takes to provide quality services. The Agency Head must look at the process from a QI basis.

These are two fair employment cases involving Native American exclusions and exemptions that an employment and training agency may have to deal with:

<u>Situation A</u>. An employee was terminated from the Mohegan Casino and Tribal Business Office on the Blue Cliff Indian Reservation. The employee complained that his termination lacked just cause and that members of the Tribe abetted this discrimination. The complainant asserted that the Job Order that he relied on to obtain the job failed to clearly identify remedies that were available to employees "wrongfully discharged."

<u>Situation B.</u> An applicant applied for the position as a "croupier," for Mohegan Enterprises Inc. on the same reservation. She did not get the job. When she inquired about the non-selection, she was informed that several Tribal candidates had applied for the position and that one of these applicants was eventually selected. The reason given was that Mohegan Enterprises, Inc. was a sovereign Tribal entity and had exercised a permissible "employment criterion" reasonably designed to further the cause of Indian self government. The applicant contacted the Equal Rights Division (ERD) of the Department of Workforce Development (DWD).

Additional Facts

- The DWD Equal Rights Division is responsible for the compliance to the Wisconsin Fair Employment Law that prohibits discrimination in **employment conditions** based on age, ancestry, arrest and conviction record, color, creed, disability, gender or sexual orientation, marital status, military service, national origin, pregnancy or child birth, religion, use of legal products during work hours, and unfair genetic and honesty testing.
- Passages of (I) the Native American Job Order Policy
 The preference or criterion is similar in kind to the constitutional requirement that a United States Senator when elected be "an inhabitant of the State for which he shall be chosen.... (It) is granted to Indians not as a discrete racial group, but rather...because of their legal status...as members of quasi-sovereign tribal entities." (25 U.S.C. 461, The Wheeler-Howard Act, the Indian Reorganization Act)

	Response:	
Questions to consider:	Pre-session Notes	Session Discussion
What is the complaint in Situation A? Is it legitimate?		A. Termination of employment without just cause and discrimination. Legitimate? No. Indian Tribes/Nations are not
What is the complaint in Situation B? Is it legitimate?		subject to Title VII of the Civil Rights Act of 1964 or the Wisc. Fair Employment Act (WFEA). • Tribe's employment policies are governed

	by the Indian Civil Rights Act, Title II of 1968. In addition, the matter is heard in Tribal Court. Situation B: Preferential hiring. Legitimate? No. Tribal businesses may hire and fire preferentially, based on the Indian Employment Law, as well as DWS-Job Service, Job Order Preference Policy.
	 U.S. Constitution, Article 1(8), vests the federal government with the authority to engage in relations with the Tribes and thereby firmly places Tribes in the Constitutional family of nations. Title II of the Indian Civil Rights Act of 1968. Public Law 83-280, Office of Tribal Justice, United states Department of Justice November 9, 2000. The June 18, 1934 Indian Reorganization Act, (Wheeler-Howard Act, 48 Stat. 934-25 U.S.C., S. 461, et. Seq.) Trumps WFEA.
3. What other facts or questions must you ask?	 Are the employee and the applicants members of the tribe? What guidance was issued with the employment offer? What do we know about the employee's employment history? Did the applicant meet qualifications in the first place? References? Were the employee and applicants made aware of Indian Preference in hiring? Were there other issues that may be discrimination based on other protected status besides race, i.e., age, disability, sexual orientation, etc.

4. Depending on your role in the tribal organization, how would you go about investigating this complaint?	 Determine jurisdiction Ask for documentation provided employees at the time of hire to determine what representations the Casino personnel made. Refer or interview the Complainants based on outcome of jurisdictional analysis – if analysis indicates no jurisdiction, respond to ERD that this is the Tribal findings. Determine whether the Tribe lists Job Orders with the Job Service. If yes, has the Tribal Human Resources, if such unit exists, apprised the employees and applicants of Indian Preference Job Order Policy?
5. What other services or benefits could/should have been offered in this situation?	Provide information to complainants regarding differences between Tribal and other employment.

Who does what to resolve the complaint? Assume that the Equal Rights Division contacted the Tribe as the Respondent of the complaint.

Who (Agency Head, EOC, LEPC,	What steps must be taken to resolve these issues?	
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion
Tribal EOC		 Provide a written Summary Report for Agency Head approval as the Respondent in the ERD complaints. Include the following Decisions as resources: The June 18, 1934 Indian Reorganization Act, (Wheeler-Howard Act) Fellencer v. the Penobscot Nation Dillon v. Yankton Sioux Tribe Housing Authority Worcester v. Geogia

	•Educate employees about their rights.
Agency/Tribal Head	•Review and approve the EOC' Summary Report as Respondent to the ERD complaints.

Pre-session Notes	Session Discussion
EOC	 Provide a copy of a Summary Report of findings and proposed corrective actions if appropriate to the Agency Head for approval. Post Employee Complaint procedure guidelines. Post Tribal Employment Laws, policies and procedure to ensure that all employees are aware of their standing with the agency. Post Tribal Employment Complaint Coordinator name and phone number to ensure access when employees have questions.
Agency Head	 Review the Summary Report and approve. Ensure that a copy of the report is forwarded to ERD. Notify employees that their claims must be pursued through the Tribe, because the State of Wisconsin lacks jurisdiction.

Hua Vang, a Hmong bilingual Human Services worker for the Village of Los Mismos Cuentos Viegos, works in the WIC program that offers health and nutritional services to women, infants and children. Mr. Vang was hired as one of two full-time bilingual workers in response to its large Hmong community. The village also has a language line. However, Mr. Vang stated that village staff—the nutritionist, the receptionist, his supervisor, the program director and the Human Services administrator—continuously violate Title VI of the Civil Rights Act that prohibits discrimination based on national origin.

1. Mr. Vang filed a discrimination complaint with the State Department of Health and Family Services. He claimed that the village Human Services discriminated against Hmong clients and discriminated against him as an employee.

His co-workers made comments like:

- "If they want to live in America, they should be forced to learn English."
- "We should not be made to provide interpreters."
- "We bend over backwards to provide opportunities and provide care for minorities."
- "We make it very easy for them to be lazy when we have to provide interpreters."
- 2. The Hmong clients complained that the receptionist would not schedule them for appointments if Mr. Vang was unavailable to interpret for them. She would simply hang up on them. The nutritionist did not spend enough time to help them understand how to modify their diet.
- 3. Mr. Vang brought the complaints to management and discussed the issues during staff meetings. He was labeled as a complainer and not a team player. They felt that it was reasonable to ask LEP walk-in clients to return when Mr. Vang was available to interpret for them, or to come on the scheduled day per week when LEP clients were provided services.
- 4. Despite his complaints, the two co-workers continued to make what he perceived as racist remarks. The Hmong clients continued to complain that on days he was not at work, the receptionist would continue to hang up on them.
- 5. Mr. Vang filed a discrimination complaint against his co-workers and the village Human Services using its internal complaint process. The village conducted an investigation and found no probable cause. After the investigation was completed, Mr. Vang was informed that his position was cut from full time to part time, and consequently, he lost his insurance benefits.

Additional Facts

- 1. DHFS has no jurisdiction over discrimination in employment conditions (Title VII). Where should Mr. Vang be referred to for his own discrimination complaint?
- 2. Can Mr. Vang complain in behalf of the Hmong clients if he is an employee of the village Human Services?
- 3. Under 7 CFR Subtitle A Part 15.7, intimidation or retaliatory acts are prohibited. "No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act (Title VI) or the regulations in this part, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the regulations in this part."
- 4. A Tangible Employment Act occurs when a change in the job has an adverse effect on the employee, e.g., cut in time, salary and benefits, or a change in job functions that would be onerous enough for the employee to result in his or her resignation.
- 5. USDA requires that complaints be filed directly to Washington D.C. offices, but these can be submitted also to the state (DHFS), and USDA/OCR-Region 5 in Chicago.

		Response:
Questions to consider:	Pre-session Notes	Session Discussion
What is the complaint? Is it legitimate?		Yes, complaint is legitimate. 1) Failure to provide interpretation to LEP clients. 2) Different treatment based on race and national origin. 3) Retaliation for a protected activity, i.e., filing an employment discrimination complaint.
What federal and/or state laws apply, if any? Why?		Service Delivery: 1) Title VI and Executive Order 13166 LEP 2) Title VI in USDA FNS Programs Employment: 3) 7 CFR Subtitle A Part 15.7 Intimidation or retaliatory acts prohibited 4) Wisconsin Fair Employment Law 111.322 Discriminatory action prohibited (5) Title VII, race and national origin; retaliation 6) Circuit Court ruling on sexual harassment case: Tangible Employment Action—loss in salary and benefits.

3. What other facts and questions must you ask?	 Why has the village not used the language line when Mr. Vang was not available? Could better coordination of schedules of the two bilingual staff cover all hours of service? Because there could have been a clear conflict of interest, did the village contract for an outside investigation of a situation that on its surface alone, could easily be perceived as discrimination and retaliation? Does the village answer to a Board? Is the Board knowledgeable about non-discrimination laws?
4. Depending on your role in the organization, how would you go about investigating this complaint?	Interview Hmong clients; review whether or not other LEP groups had similar experience; interview Vang's co-workers, etc. named in the complaint; warn against further retaliation. Ask why the other Hmong interpreter could not work with the LEP Hmong clients.
5. What other services or benefits could should have been offered in this situation?	Services of the 2 other bilingual workers? Why not offered? Ask DHFS support for translation of program vital documents; contact with MAA, other CBOs.

Who (Agency Head, EOC, LEPC,	What steps must be taken to resolve these issues?	
Complaint Coord., Front Line Staff)	Pre-session Notes	Session Discussion
Front line staff		Know the agency's obligation to provide services to LEP clients; ensure that signs in the major languages of the service area are prominently posted where LEP clients could have first contact with the agency.
LEP/Complaint Coordinator		Investigate/interview all involved in complaint. If violations of Title VI and Executive Order 13166 are substantiated, refer matter to agency

	head to order the Health Department to stop discriminatory practices, ensure new methods of providing oral language assistance. If charges of retaliation for filing a service delivery complaint is substantiated, refer matter to agency head to correct the retaliatory action taken against Mr. Vang.
	Make recommendations to agency head to rectify discriminatory practices of employment retaliation
EOC/Complaint Coordinator	Coordinate investigation of LEP issues together with EOC/Complaint Coordinator.
Agency Head	Account for any perceived retaliatory action— immediately review reasons for FTE cut from full time to half time. Redress if possible. Immediately counsel all staff involved; corrective action must be done right after investigation is completed. Management staff must bear heavier burden for corrective action. Review LEP policy and procedures again; train staff; use evaluation tool on LEP. Take responsibility for discriminatory behavior, if any. Establish community outreach activities to gain Hmongs' trust once again. Treat Mr. Vang's feedback the same as coming from the Hmong community.

Pre-session Notes	Session Discussion
	Even before a full investigation is completed, do <u>corrective action now.</u> Consider the impact of not providing competent interpreters to the Hmong community. The perception that the county is not there to help is enforced by the seemingly discriminatory attitude of the village staff. Training staff may not be enough; a continuing relationship with the Hmong community is necessary and must be done in many different ways to earn their trust. A complete review of the intake process for WIC and other village programs must be evaluated with benchmarks; an annual evaluation must be required from the village; an on-site visit either from the state or from USDA (or both) may be necessary to articulate the illegal practices that the village may have been instituted into the system.

CASE STUDIES #9

DISCRIMINATION THEORY SCENARIO

Two theories or concepts, neither mutually exclusive, are used as the basis for analyzing discrimination claims under federal laws and state statutes. These theories are disparate impact and differential treatment.

- Disparate Impact is a statistical measure where a "significant" number of cases or instances are used to determine whether the rate at which members of legally "protected classes" is treated differently from members of the majority or predominant population.
- Differential Treatment happens when a "protected class" member is treated differently from a member of the majority or predominant population.

Case Studies:

- A. A county Food Stamp Program serves 1,000 participants. Of the 1,000 participants, 850 are White and 150 are Black. Of the 850 White participants about one-third (280 participants) were required to provide additional documentation after applying for the program to establish eligibility. Of the 150 Black applicants about two-thirds (99 participants) were required to provide additional documentation to establish eligibility. Since the ratio at which Blacks were required to provide additional documentation was one-third higher or twice the rate of that for the White majority group, is this an example of Disparate Impact?
- B. Two individuals go to the Food Stamp Office in an effort to apply for Food Stamps (Food Share). The first individual is not ambulatory, uses a wheel chair and has a speech impediment that makes it difficult for people to understand him. The receptionist informs the applicant that the Office cannot serve him that day, but that a case worker will follow-up with an "interpreter" to assist with his Food Share application. The second individual is sent immediately to an intake worker to process her application. What is this an example of?

Additional Facts:

For Case A, statistics that could show a pattern of client services data broken down by majority/minority status have not been collected for more than 5 years. The demographic data for the county's service area were updated in 2002.

For Case B, this particular county building went through a facility rehab in 1995. The county reported that they followed the ADA Accessibility Guidelines (ADAAG). The county submitted its Civil Rights Compliance Plan that was approved by DWD in 2003. Regardless, the county has received a number of complaints for inaccessibility to services. The Wisconsin Coalition for Advocacy filed a class action suit representing their clients with disabilities with the Equal Rights Division and the US DHHS Office for Civil Rights.

- Do the alleged discriminatory requirements have a history that can be traced? Why was this done?
- Were there other issues that should be considered when looking at the uneven ratio?

Were there other minority groups that went through additional documentation? What vital information was missing from existing records?

Case Studies # 9

	Response:		
Questions to consider:	Pre-session Notes	Session Discussion	
1. What is the complaint? Is it legitimate?		Yes, for both scenarios; Case A discrimination based on race Disparate Impact; Case B discrimination based on disability, Differential Treatment.	
2. What federal and/or state laws apply, if any? Why?		Title VI of the Civil Rights Act of 1964, The Civil Rights Restoration Act of 1987; Food Stamp Policy, USDA; ADA Title II (ADAAG), prescribing services provided in the most integrated means possible.	
3. What other facts or questions must you ask?		 Reason(s) why data collection has not been done? Should be an on-going requirement. Suit may result with on-site visit by state or fed OCR; Cty must prepare reasons for noncompliance. Non-compliance will probably have budgetary implications. What kind of assistance does the person with disabilities need to communicate with his case worker? 	
Depending on your role in the organization, how would you go about investigating this complaint?		Verify the disparate impact calculations to determine their accuracy. Conduct interview on-site with participants and case managers to determine why additional documentation is being required	
5. What other services or benefits could should have been offered in this situation?		Clients needing additional documentation were required could be provided emergency assistance pending review of additional documentation, if this is indeed necessary	

Who (Agency Head, EOC, LEPC, Complaint Coord., Front Line Staff)	What steps must be taken to resolve these issues?		
	Pre-session Notes	Session Discussion	
Front Line Staff		Know who your clients are; anticipate any	
		accommodations needed that the county is	
		legally required to provide.	
EOC/Complaint Coordinator		Process complaint and take corrective action if	
		there is evidence of racial discrimination; make	
		sure accommodations are available for clients	
		with disabilities, i.e., alternate ways of bring the	
		program to the client if physical barriers have not	
		been removed and if staff has not been fully	
		trained to communicate with persons with	
Ananauthani		disabilities.	
Agency Head		Oversee overall investigation and responses on behalf of agency responsible for examining and	
		reacting to disparate impact scenario. Assess	
		physical access to facility and program access to	
		services at once. Monitor using ADAAG as	
		benchmarks. Make sure budget reflects the	
		need for removing barriers to programs, services	
		and benefits.	
LEP Coordinator		No need to be included in the investigation,	
		unless LEP groups are taken into consideration	
		in the overall picture.	
Complaint Coordinator		Process complaint and take corrective action	
		provided evidence of racial discrimination	

Pre-session Notes	Session Discussion	
	Establish whether or not Disparate Impact exists based on a more thorough data collection; pinpoint points of possible discrimination in services	
	If disparate impact exists, re-evaluate the system that will result in corrective action	
	Before turning someone away, make sure you are unable to provide alternative emergency services	
	Attend to physical and program accessibility	
	 Know more about how to accommodate a large range of disabilities, and train staff 	
	See other notes above.	
	 Respond to Wisconsin Coalition for Advocacy in writing regarding findings and corrective action. 	